

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Murray	Team: Team # 3	CCRB Case #: 201203212	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 03/09/2012 2:25 PM, Sunday, 03/11/2012	Location of Incident: In the vicinity of § 87(2)(b)	Precinct: 28	18 Mo. SOL 9/9/2013	EO SOL 9/9/2013	
Date/Time CV Reported Sun, 03/11/2012 4:54 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 03/11/2012 4:54 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Catherine Vargas	27374	939632	028 PCT
2. POM Frederic Disla	10123	936498	028 PCT
3. POF Mirian Jimenez	26463	947107	028 PCT
4. POM Pedro Vazquez	10452	907508	028 PCT
5. POM Brian Davis	25667	931624	028 PCT
6. POM Luis Rodriguez	27492	947421	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Francis Zito	00022	942746	028 PCT
2. POM Jose Cadavid	09085	941483	028 PCT
3. SGT Juan Rodriguez	04117	939357	028 PCT
4. SGT Julio Agron	02611	910975	028 PCT
5. POM Timothy Purcell	05679	934080	028 PCT
6. POM Marcus Colon	14439	943097	028 PCT
7. POM Christian Saal	26739	943766	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Mirian Jimenez	Discourtesy: On March 9, 2012, § 87(2)(b) in Manhattan, PO Mirian Jimenez spoke rudely to § 87(2)(b) and an individual.	§ 87(2)(b)
B.POF Catherine Vargas	Off. Language: On March 9, 2012, § 87(2)(b) in Manhattan, PO Catherine Vargas made remarks to § 87(2)(b) and an individual based upon race.	§ 87(2)(b)
C.POF Catherine Vargas	Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Catherine Vargas used physical force against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
D.POF Catherine Vargas	Discourtesy: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Catherine Vargas spoke rudely to § 87(2)(b)	
E.POF Mirian Jimenez	Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Mirian Jimenez used physical force against § 87(2)(b)	
F.POF Catherine Vargas	Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Catherine Vargas struck § 87(2)(b) with an asp.	
G.POM Pedro Vazquez	Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Pedro Vazquez used physical force against § 87(2)(b)	
H.POM Pedro Vazquez	Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Pedro Vazquez used physical force against § 87(2)(b)	
I.POM Pedro Vazquez	Abuse: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Pedro Vazquez damaged § 87(2)(b)'s property.	
J.POM Pedro Vazquez	Discourtesy: On March 9, 2012, inside of § 87(2)(b) in Manhattan, and en route to the 28th Precinct stationhouse, PO Pedro Vazquez spoke rudely to § 87(2)(b)	
K.POM Brian Davis	Discourtesy: On March 9, 2012, while en route to the 28th Precinct stationhouse, PO Brian Davis spoke rudely to § 87(2)(b)	
L.POM Frederic Disla	Discourtesy: On March 11, 2012, at the 28th Precinct stationhouse, PO Frederic Disla spoke rudely to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

## Case Summary

On March 13, 2012, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System (Enc. 4a – 4c). On March 20, 2012, § 87(2)(b) filed a duplicate of this complaint with the Internal Affairs Bureau (IAB) via phone, generating IAB log 12-6081 (Enc. 5a – 5b).

On March 9, 2012, at 2:25 p.m., officers stopped § 87(2)(b) near the intersection of West 113<sup>th</sup> Street and Lenox Avenue, in Manhattan. On March 11, 2012, § 87(2)(b) arrived at the 28<sup>th</sup> Precinct stationhouse to retrieve her property. The following allegations resulted from these two incidents:

- **Allegation A – Discourtesy: On March 9, 2012, in the vicinity of § 87(2)(b) in Manhattan, PO Miriam Jimenez spoke rudely to § 87(2)(b) and an individual.**
- **Allegation B – Offensive Language: On March 9, 2012, in the vicinity of § 87(2)(b) in Manhattan, PO Catherine Vargas made remarks to § 87(2)(b) and an individual based on race.**
- **Allegation D – Discourtesy: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Catherine Vargas spoke rudely to § 87(2)(b)**
- **Allegation J– Discourtesy: On March 9, 2012, inside of § 87(2)(b) and en route to the 28<sup>th</sup> Precinct stationhouse, PO Pedro Vazquez spoke rudely to § 87(2)(b)**
- **Allegation K – Discourtesy: On March 9, 2012, while en route to the 28<sup>th</sup> Precinct stationhouse, PO Brian Davis spoke rudely to § 87(2)(b)**
- **Allegation L – Discourtesy: On March 11, 2012, at the 28<sup>th</sup> Precinct stationhouse, PO Fredrick Disla spoke rudely to § 87(2)(b)**  
§ 87(2)(b), § 87(2)(g)
- **Allegation C – Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Catherine Vargas used physical force against § 87(2)(b)**
- **Allegation E – Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Miriam Jimenez used physical force against § 87(2)(b)**
- **Allegation F – Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Catherine Vargas struck § 87(2)(b) with an asp.**  
§ 87(2)(g)
- **Allegation G – Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Pedro Vazquez used physical force against § 87(2)(b)**
- **Allegation H – Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Pedro Vazquez used physical force against § 87(2)(b)**
- **Allegation I – Abuse of Authority: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Pedro Vazquez damaged § 87(2)(b)'s property.**  
§ 87(2)(b), § 87(2)(g)

- § 87(2)(g), § 87(4-b)

## Results of Investigation

### Civilian Statements

#### Complainant/Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of this incident. § 87(2)(b)

#### Statements to Medical Personnel

On March 14, 2012, § 87(2)(b) stated to § 87(2)(b) Hospital personnel, “Five days ago an officer grabbed her by left arm threw her to the ground and kicked her back” (Enc. 10a).

#### CCRB Statement

§ 87(2)(b) provided a phone statement to the CCRB on March 20, 2012 (Enc. 7a), was interviewed by IAB Group 10 officers on March 20, 2012 (Enc. 36a – 36g), and was interviewed at the CCRB on March 29, 2012 (Enc. 8a – 8e). The statements were mainly consistent with any discrepancies noted below.

On March 9, 2012, at 2:25 p.m., § 87(2)(b) her friend, § 87(2)(b) and a friend known only as § 87(2)(b) were crossing Lenox Avenue near the intersection of West 113<sup>th</sup> Street, in Manhattan, when they heard a police siren. PO Miriam Jimenez of the 28<sup>th</sup> Precinct, identified via the investigation and described by § 87(2)(b) as a 5’6” tall, slim, Hispanic female in her mid-20s, stated “Whatcha looking at bitch?” from the RMP passenger’s seat. PO Catherine Vargas of the 28<sup>th</sup> Precinct, identified by § 87(2)(b) and described as a 5’3” tall, heavysset Hispanic female in her late 20s was driving the vehicle.

§ 87(2)(b) replied, “Did you just call us a bitch? If I am a bitch you’re a bitch, bitch.” PO Jimenez laughed and stated, “Ah you mad, you mad ‘cuz I called you a bitch.” § 87(2)(b) interjected, “Ya’ll the NYPD, right? You’re supposed to restore justice and protect us, and you’re sitting here trying to provoke us. You’re miserable, if you don’t like your job then quit.” § 87(2)(b) and § 87(2)(b) walked through the intersection slowly while intermittently stopping to yell at the officers. PO Vargas sped the RMP up for a brief second then slammed on the brakes five feet from the three women. § 87(2)(b) started yelling, “You’re trying to hit me with your car now?! PO Vargas exited the vehicle and stated, “Yea, all three of you black bitches!”

The three women entered a deli located at § 87(2)(b) in Manhattan. PO Vargas entered behind them and obtained § 87(2)(b) and § 87(2)(b)’s identifications, but § 87(2)(b) did not have hers. PO Vargas began to handcuff § 87(2)(b) but § 87(2)(b) fled to the back of the store. PO Vargas chased § 87(2)(b) grabbed her hair, and slammed her face against the freezer. § 87(2)(b) turned around and punched PO Vargas and the two began “fist fighting.”

§ 87(2)(b) approached the tussle to attempt to grab § 87(2)(b)’s cell phone, but PO Vargas stated to § 87(2)(b) “back the fuck up!” PO Jimenez entered the bodega and began striking § 87(2)(b) in the face with a closed fist an unknown number of times. § 87(2)(b) was still standing at this

time and only had one handcuff on her wrist. PO Vargas swung her asp at § 87(2)(b) though § 87(2)(b) did not see if or where it made contact with § 87(2)(b)'s body.

Approximately 40 officers entered the bodega. PO Pedro Vazquez, who was identified by § 87(2)(b) and described as a 5'11" tall, heavysset uniformed white male in his 40s, ran into the bodega and "jumped on top of § 87(2)(b) could not describe this further, as she ran to the front of the store and did not see what happened to § 87(2)(b) PO Vazquez then kicked § 87(2)(b) in her back, forcing her to the floor. During her CCRB phone statement, § 87(2)(b) alleged that PO Vazquez was grabbing her shoulders and arms and throwing her against the wall, though she did not mention this in her in-person statement. § 87(2)(b) denied resisting PO Vazquez's attempts to handcuff her, and stated that she was just "standing there." While § 87(2)(b) was screaming, PO Vazquez stated to her, "Shut the fuck up." PO Vazquez handcuffed § 87(2)(b) and, in the process, intentionally removed her phone from her hands and threw it to the ground, causing it to shatter. In her statement to IAB Group 10, § 87(2)(b) alleged that, while she was getting handcuffed, PO Vazquez removed her phone from her hand and seconds later she heard it shatter, though she did not observe what caused it to shatter.

PO Vazquez drove the marked van that transported § 87(2)(b) to the 28<sup>th</sup> Precinct stationhouse. While inside of the RMP, PO Brian Davis, who was identified via the investigation and described as a uniformed black male officer, continuously stated "shut the fuck up" to § 87(2)(b) PO Juan Rodriguez, who was identified via the investigation and described as a 5'6" tall, uniformed Hispanic male officer, rode in the front passenger seat of the RMP. During the ride to the precinct, PO Vazquez also stated "shut the fuck up" to § 87(2)(b) numerous times.

§ 87(2)(b) received medical treatment from § 87(2)(b) Hospital and Harlem Hospital regarding prior injuries to her back, neck, and wrist that were exacerbated during this incident. § 87(2)(b) and § 87(2)(b) were charged with resisting arrest, disorderly conduct and assaulting an officer.

On March 11, 2012, between the hours of 1 p.m. and 4 p.m., § 87(2)(b) returned to the 28<sup>th</sup> Precinct stationhouse to retrieve her property that was confiscated during her arrest. She asked PO Fredrick Disla, who § 87(2)(b) identified by name and described as a dark-skinned Indian or Hispanic male in his late 20s, for her property. PO Disla responded that he could not retrieve her property for her.

A few officers congregated and determined that it was § 87(2)(b) who injured PO Vargas, and therefore they would not give her back her property. PO Disla stated to § 87(2)(b) "Get the fuck out! You want to get yourself back here? Get out." § 87(2)(b) left the stationhouse without her property.

### **Attempts to Contact Victims**

During § 87(2)(b) phone statement and her in-person statement, she denied knowing § 87(2)(b)'s last name or having contact information for her, but stated that she would pass the message along to § 87(2)(b) and have her contact the CCRB. On April 26, 2012, and July 31, 2012, follow up e-mails were sent to § 87(2)(b) confirmed e-mail address requesting information for § 87(2)(b) As of the writing of this report, § 87(2)(b) has not provided the CCRB with § 87(2)(b)'s contact information and § 87(2)(b) has not contacted the CCRB. § 87(2)(b) was not stopped or arrested as a result of this incident, and there were no police documents or memo book entries regarding her involvement or presence in this incident.

On April 26, 2012, after one missed appointment, contact was established with § 87(2)(b) and she stated that she did not want to pursue her portion of the complaint. § 87(2)(b) stated that she was withdrawing her complaint on her own freewill and that she was not coerced by a member of the NYPD or the CCRB. This conversation, located in IA # 38 on the digital recording 201203212\_20120426\_1104.WAV., was reviewed by Supervising Investigator Edwin Pena, who confirmed that it adheres to agency standards. This same day a withdrawal letter was mailed to § 87(2)(b) § 87(2)(b)'s confirmed residence and has not been returned to the CCRB as of the writing of this report.

### **Fieldwork**

On May 8, 2012, a canvass of Express Deli Inc., located at § 87(2)(b) in Manhattan was conducted (Enc. 6a – 6c). The interior cameras of the bodega no longer stored the video footage from the day of the incident. The interior and exterior of the bodega were photographed. § 87(2)(b) an employee of Express Deli, acknowledged witnessing the incident but was unable to provide a statement at the time of the canvass. However, on June 19, 2012, contact was established with § 87(2)(b) and he denied witnessing any of the alleged misconduct, as he stepped outside prior to the struggle. On March 20, 2012, IAB Group 10 investigating officers arrived at Express Deli Inc., and § 87(2)(b) informed them that he had seen civilians refuse to provide their identifications and then violently resist arrest. § 87(2)(b) also stated that he observed a female civilian hit an officer in the head with a metal object (Enc. 36a – 36g).

### **Video Footage**

PO Vargas provided the CCRB with two short video clips that she obtained from the bodega's interior cameras. PO Vargas did not have the original copy of the footage, but she arrived at the bodega and took an iPhone video of the bodega's original video.

The video footage depicts PO Vargas and PO Jimenez chasing § 87(2)(b) to the back of the store where PO Vargas and § 87(2)(b) begin wrestling on their feet. PO Jimenez attempts to bear hug § 87(2)(b) from behind and § 87(2)(b) kicks PO Vargas two times, making contact with her legs. PO Vargas and PO Jimenez either grab § 87(2)(b)'s clothing behind her neck or her hair, using this as leverage to move her toward a freezer or wall that is out of the range of the video footage, though it appears that § 87(2)(b) is being forced up against a barrier.

§ 87(2)(b) swings her right elbow back at PO Jimenez's face, making contact with her forehead, and then strikes PO Jimenez with her left fist, which has an opened handcuff dangling from it. § 87(2)(b) thrashes her body free from the officers' grasp and escapes off of the screen. § 87(2)(b) appears in the video for the first time since the physical dispute began and crowds around the officers with a cell phone in her hand. PO Jimenez and PO Vargas hold § 87(2)(b) into an L shaped position and PO Jimenez strikes § 87(2)(b) one time on the back of her head with a closed fist. § 87(2)(b) strikes PO Jimenez on the left side of her face with her closed right fist. PO Jimenez appears shaky on her feet and looks at her hand, evidently noticing blood. PO Vargas, who is holding § 87(2)(b) from behind, strikes § 87(2)(b) one time on her back with an asp.

### **NYPD Statements:**

#### **Subject Officer: PO CATHERINE VARGAS**

- PO Vargas was § 87(2)(b).
- On March 9, 2012, PO Vargas worked from 12 p.m. to 8:35 p.m. on an Impact Team with PO Miriam Jimenez. Both officers were in uniform and assigned to marked RMP 4587.

#### **Memo Book**

At 2:20 p.m., three females were stopped inside of § 87(2)(b). The females were jay-walking and being disorderly. At 2:25 p.m., PO Vargas called for additional police assistance regarding females who were fighting police and resisting arrest. At 4 p.m., PO Vargas and PO Jimenez were seen at § 87(2)(b) Hospital. PO Vargas had injuries to her knee. At 5 p.m., PO Vargas arrived at the 28<sup>th</sup> Precinct to process arrest paperwork (Enc. 16a – 16b).

#### **OLBS Reports and Complaint Report**

PO Vargas prepared OLBS arrest reports for § 87(2)(b) and § 87(2)(b) (Enc. 12a – 12f). They were both arrested for assault in the first degree, obstructing governmental administration, resisting

arrest, violation of local law, and disorderly conduct for obscene language or gestures and obstructing traffic. In both reports, PO Vargas noted, “At TPO defendant was observed walking in front of a moving motor vehicle thereby obstructing vehicular traffic in a reckless manner. When police officers approached defendant, defendant began cursing and became irate. When police officers attempted to affect an arrest, defendant did cause a laceration and profuse bleeding to police officer’s forehead by intentionally striking police officer repeatedly with a closed fist. The defendant then resisted arrest by flailing her arms to prevent the police officers from hand cuffing her.” The complaint report prepared reiterates the above information (Enc. 4a – 4c).

### **Property Vouchers**

PO Vargas vouchered § 87(2)(b) and § 87(2)(b) s property together under voucher numbers § 87(2)(b) and § 87(2)(b). Of the various items vouchered, only one smart phone was listed on the invoice and there were no damages noted (Enc. 15a – 15e).

### **Criminal Court Complaint and Supporting Deposition**

The Criminal Complaint Report noted that § 87(2)(b) prevented an officer from performing an official function by grabbing PO Vargas’ arm while she was handcuffing § 87(2)(b) also obstructed vehicular and pedestrian traffic. § 87(2)(b) s Criminal Complaint Report noted that § 87(2)(b) took the handcuffs away from PO Vargas, ran away, and struck PO Jimenez multiple times in the face with a handcuff and refused to be handcuffed (Enc. 14a – 14b).

### **Injury Photos**

PO Vargas provided the CCRB with two injury photos. Photo #1 is of PO Vargas’ left knee abrasion. Photo #2 depicts PO Jimenez’s forehead and left eye laceration (Enc. 17a – 17b).

### **CCRB Statement**

PO Vargas was interviewed at the CCRB on September 11, 2012 (Enc. 18a – 18d).

On March 9, 2012, at 2:20 p.m., PO Vargas and PO Jimenez observed three women jaywalking from the eastside of Lenox Avenue to the west side of Lenox Avenue while the vehicular traffic had the green light. PO Vargas, who was driving the marked RMP, had to slam on the brakes as not to hit the three women. PO Vargas honked the horn and blared her siren.

The three females approached the RMP stating, “Fuck you, what are you going to do about it? I don’t have to fucking move. What do you think, that just because you are a cop you can do whatever you want?” Neither PO Vargas nor PO Jimenez used profanity or stated, “Whatcha looking at bitch” or “ahh, you mad because I called you a bitch.” PO Vargas did not state, “Yea all three of you black bitches” nor did she hear PO Jimenez make this statement.

The three women entered a bodega at § 87(2)(b) and PO Vargas and PO Jimenez entered shortly behind them with intentions of issuing them a summons for jaywalking. Two individuals, identified as § 87(2)(b) and § 87(2)(b) provided their identification to PO Vargas, but the third individual, § 87(2)(b) refused to provide her identification.

PO Vargas began to handcuff § 87(2)(b) but § 87(2)(b) grabbed the handcuffs and ran to the back of the store. When PO Vargas caught up with her, § 87(2)(b) kicked PO Vargas and swung her arms, as if she was attempting to strike her with the loose handcuff. PO Vargas and § 87(2)(b) began to wrestle on their feet and § 87(2)(b) struck PO Vargas a number of times with a closed fist on PO Vargas’ face and head area. PO Vargas punched § 87(2)(b) once or twice on her back to overcome her resistance, but this did not successfully cease her aggression. PO Vargas does not recall pulling § 87(2)(b) s hair or banging her head against a freezer door. PO Jimenez attempted to assist PO Vargas in handcuffing § 87(2)(b) s other wrist, but they were unable to do so.

PO Vargas went over the radio to request an additional unit. As PO Vargas and PO Jimenez were struggling with § 87(2)(b) punched PO Jimenez in the face numerous times with the handcuffs, causing lacerations to PO Jimenez's scalp, forehead, and left eye. PO Vargas removed her asp and struck § 87(2)(b) two times on her back in quick succession while § 87(2)(b) was punching PO Jimenez in the face. § 87(2)(b) stated, "Ok, Ok I will stop" but she continued to fight with PO Jimenez. § 87(2)(b) was getting very close to PO Vargas and PO Jimenez and was yelling at the officers. PO Vargas repeatedly told § 87(2)(b) to back up, but she did not recall stating "back the fuck up." Eventually, officers arrived and were able to get § 87(2)(b) fully handcuffed. PO Jimenez was unable to assist, as she was bleeding profusely from her face. PO Vargas pointed § 87(2)(b) out to additional officers, and they presumably handcuffed her, though PO Vargas did not observe this. PO Vargas did not observe an officer kick § 87(2)(b) and is unaware of whether force was used against her. She did not hear an officer state, "Shut the fuck up" to § 87(2)(b) at any point during the interaction, nor did she observe an officer damage her cell phone.

**Subject Officer: PO MIRIAM JIMENEZ**

- PO Jimenez was § 87(2)(b).
- On the incident date, PO Jimenez worked the same tour and assignment as PO Vargas.

**Memo Book**

At 2:20 p.m., three females were stopped inside of § 87(2)(b) for disorderly conduct and jaywalking. At 2:25 p.m., PO Jimenez called for additional assistance regarding females fighting and resisting arrest. At 2:50 p.m., PO Jimenez went to § 87(2)(b) Hospital.

**CCRB Statement**

PO Jimenez was interviewed at the CCRB on February 15, 2013 (Enc. 20a – 20c). Her statement was consistent with PO Vargas' with only exceptions noted below.

PO Jimenez stopped three women acting disorderly while jaywalking across Lenox Avenue. When PO Vargas blared the siren at them, the three women began yelling at the officers. PO Vargas told them to stop, but they entered a bodega, causing PO Vargas and PO Jimenez to follow them inside and obtain the ID cards of § 87(2)(b) and § 87(2)(b). PO Jimenez did not state, or hear PO Vargas state, "Whatcha looking at bitches?" or "You mad that I called you a bitch?" Neither PO Vargas nor PO Jimenez stated, "Yea, all three of you black bitches."

§ 87(2)(b) did not have her identification and, as PO Vargas began to handcuff her, she ran to the back of the store with PO Vargas' handcuffs. PO Vargas and § 87(2)(b) began tussling on their feet. § 87(2)(b) was swinging the open handcuffs toward PO Vargas, and PO Vargas was trying to grasp § 87(2)(b)'s body to get her arms under control. § 87(2)(b) continuously flailed her arms, striking both officers with the open set of handcuffs. § 87(2)(b) was substantially taller and heavier than both PO Jimenez and PO Vargas, and they were unable to get her to the ground. PO Jimenez did not observe PO Vargas pull § 87(2)(b)'s hair and slam her face into the freezer. Upon viewing the video footage, PO Jimenez stated that the officers may have been pulling on the clothing behind § 87(2)(b)'s neck, or her hair, though she was unable to recall. § 87(2)(b) was too close to the officers as they were effecting the arrest, though PO Jimenez could not recall whether she or PO Vargas stated "back the fuck up" to her. PO Jimenez continually yelled "stop resisting!"

§ 87(2)(b) continued to kick and punch the officers, making contact at least three times with PO Jimenez's head which caused her to bleed profusely from her head into her eyes. At first PO Jimenez attempted to grab § 87(2)(b)'s arms to get control of her body, but PO Vargas and PO Jimenez were unable to get her onto the ground. PO Jimenez could not recall punching § 87(2)(b) but upon reviewing the video footage, she confirmed that she did in fact strike § 87(2)(b) at least one time on the back of her



head. PO Vargas removed her asp and struck § 87(2)(b) PO Jimenez is uncertain where PO Vargas struck § 87(2)(b) or how many times § 87(2)(b) was struck, because by this time PO Jimenez had blood pouring down her face and was unable to see or assist PO Vargas. PO Jimenez did not observe a male officer jump onto § 87(2)(b) or kick § 87(2)(b) She did not hear a male officer state, “Shut the fuck up” and she is unaware of any damaged property, including a cell phone in § 87(2)(b) possession.

**Subject Officer: PO PEDRO VAZQUEZ**

- *PO Vazquez was § 87(2)(b)*
- *On March 9, 2012, PO Vazquez worked from 12 p.m. to 10:35 p.m. as an Impact officer in marked van 5619. He was working in uniform with PO Brian Davis and PO Juan Rodriguez.*

**Memo Book**

PO Vazquez does not have any entries in his memo book regarding this incident (Enc. 22a – 22c).

**CCRB Testimony**

PO Vazquez was interviewed at the CCRB on February 15, 2012 (Enc. 23a – 23b).

At the time of the incident, PO Vazquez arrived at § 87(2)(b) in Manhattan, in response to a call for an additional unit. Upon arriving, he observed PO Jimenez’s face covered in blood and PO Vargas on the floor with § 87(2)(b) and an unidentified officer. The officers handcuffed § 87(2)(b) prior to PO Vazquez’s arrival, and he did not assist in handcuffing any arrestee. PO Vazquez did not observe a physical struggle, as it appeared to have ended prior to his arrival. PO Vazquez did not use force against any individual, including jumping on § 87(2)(b) or kicking § 87(2)(b) PO Vazquez may have escorted a handcuffed arrestee to a transport vehicle, though he did not handcuff her himself. PO Vazquez did not tell § 87(2)(b) to “shut the fuck up” nor did he throw her phone on the ground. Both arrestees were cursing and screaming on the way out of the bodega. PO Vazquez did not transport an arrestee to the stationhouse and does not believe that his van was used to transport an arrestee.

**Subject Officers: PO BRIAN DAVIS and PO LUIS RODRIGUEZ**

- *PO Davis was § 87(2)(b)*
- *PO Luis Rodriguez was § 87(2)(b)*
- *On the date of the incident, PO Davis and PO Rodriguez worked from 12 p.m. to 8:35 p.m. and her assigned to Impact with PO Pedro Vazquez. Both officers were in uniform and assigned to marked van #5619.*

**Memo Book**

PO Davis and PO Rodriguez do not have any memo book entries regarding this incident (Enc. 27a – 27d; 25a – 25b).

**CCRB Testimony**

PO Davis and PO Rodriguez were interviewed at the CCRB on March 20, 2013 (Enc. 28a – 28b; 26a – 26b). Their statements were consistent with each other.

At the time of the incident, PO Davis, PO Vazquez and PO Rodriguez responded to § 87(2)(b) in Manhattan, after received a call for an additional unit. Upon arriving, both arrestees were already handcuffed and no physical struggle took place in their presence. Neither officer observed PO Vazquez damage an arrestee’s phone or state, “Shut the fuck up.” Some of the officers at the location appeared to be seriously injured. PO Davis, PO Vazquez, and PO Rodriguez transported § 87(2)(b) to the stationhouse. Both PO Davis and PO Rodriguez noted that § 87(2)(b) was acting irate and

agitated during the two minute ride to the stationhouse. She kept asking PO Davis what her charges were, but PO Davis had no information regarding her arrest and informed § 87(2)(b) to ask her processing officer instead. PO Davis denied stating “Shut the fuck up” or hearing PO Vazquez make this statement. PO Rodriguez denied hearing any officer tell § 87(2)(b) to “shut the fuck up” nor did he hear any officer use profanity.

**Subject Officer: PO FREDRICK DISLA**

- PO Disla was § 87(2)(b).
- On March 9, 2012, PO Disla worked 12 p.m. to 10:35 p.m. as a foot post at 115<sup>th</sup> Street and Lenox Avenue, in Manhattan. PO Disla was working in uniform with PO Christian Saal and was not assigned to a vehicle. On March 11, 2012, PO Disla worked from 3 p.m. to 11:35 p.m. assigned to Patrol Sectors D and E with PO Marcus Colon. Both officers were in uniform and assigned to a marked RMP.

**Memo Book**

On March 9, 2012, at 2:25 p.m., PO Disla responded to a call for an additional unit at West 113<sup>th</sup> Street and Lenox Avenue, in Manhattan. On March 11, 2012, PO Disla began his tour at 3 p.m. and was present at the stationhouse from the beginning of his tour until 5 p.m. when he did the RMP check and left the precinct (Enc. 29a – 29c).

**CCRB Testimony**

PO Disla was interviewed at the CCRB on February 15, 2013 (Enc. 30a – 30b).

On March 9, 2012, at 2:25 p.m., PO Disla responded to a bodega located at § 87(2)(b) in Manhattan, but remained outside and did not observe any of the alleged misconduct.

On March 11, 2012, PO Disla was at the stationhouse from approximately 3 p.m. to 5 p.m. doing administrative work. He does not recall what the administrative work entailed, where in the stationhouse he was working, or who he was with. Upon viewing an arrest photo of § 87(2)(b) PO Disla stated that he did not recognize her from either the March 9, 2012, or March 11, 2012, incidents. PO Disla was unable to recall a female civilian arriving at the stationhouse on March 11, 2012, to obtain her property.

In regards to the March 11, 2012 incident, PO Disla does not recall stating “Get the fuck out. You want to get yourself back here? Get out,” or using any type of profanity toward a civilian.

**Medical Records**

§ 87(2)(b) was treated at § 87(2)(b) Hospital on § 87(2)(b), and § 87(2)(b) (Enc. 32a – 32tt). § 87(2)(b) chief complaint was left arm pain, headache, shoulder pain, neck pain, back pain, and buttocks pain. On § 87(2)(b), § 87(2)(b) complained to § 87(2)(b) Hospital about neck and back pain. § 87(2)(b) sustained herniated disks in her back from a car accident one year prior to this incident and her injuries were exacerbated during her arrest. Her primary diagnosis was Musculoskeletal pain disorder. On § 87(2)(b), § 87(2)(b) arrived at § 87(2)(b) Hospital with the chief complaint of neck and back pain. She was diagnosed with a neck sprain and strain.

**NYPD Documents**

**SPRINT Report**

SPRINT Report F08614 was generated as a result of the March 9, 2012, incident (Enc. 33a – 33d). At 2:24 p.m., an overtime sergeant transmitted that an injured MOS was at West 113<sup>th</sup> Street and Lenox Avenue. A 28<sup>th</sup> Precinct sergeant arrived at the location and reported that the MOS was being escorted to the hospital with an eye laceration. At 2:27 p.m., two individuals were placed under arrest. At 2:35 p.m., a 28<sup>th</sup> Precinct foot post transported the two arrestees to the stationhouse.

### **Roll Call**

The 28<sup>th</sup> Precinct tour 3 roll call for March 9, 2012, lists Sgt. Juan Rodriguez as the Conditions supervisor. PO Davis, PO Rodriguez, PO Vazquez, PO Vargas, PO Disla and PO Jimenez were assigned to Impact (Enc. 34a – 34g). The 28<sup>th</sup> Precinct tour 3 roll call for March 11, 2012, lists PO Disla as being assigned to patrol sectors D and E with PO Marcus Colon (Enc. 39a – 39b).

### **Command Log**

The Command Log from March 9, 2012, lists § 87(2)(b) and § 87(2)(b) as being logged into the stationhouse at 2:35 p.m. and 2:38 p.m. Both of their conditions are listed as “apparently normal” (Enc. 35a). The March 11, 2012 Command Log does not have any notations regarding § 87(2)(b) alleged attempts to retrieve her property from the stationhouse (Enc. 40a – 40c).

### **Other Evidence**

#### **IAB Group 10 Investigating Officer’s Report for Call Out**

Group 10 performed call out 12-0824 in regard to this incident (Enc. 36a – 36g). On March 20, 2012, the IAB officers interviewed § 87(2)(b) and § 87(2)(b). They made various attempts to obtain the video footage associated with the complaint but were ultimately unable to do so. IAB recommended this case to OCD as an arrest dispute with a spin-off to the CCRB for force.

§ 87(2)(b), § 87(2)(a) 160.50

### **Status of Civil Proceedings**

- § 87(2)(b) filed a Notice of Claim with the City of New York on an unknown date, claiming negligent training and hiring, emotional distress, excessive force, false arrest and malicious prosecution. She is seeking two million dollars as redress (Enc. 43a – 43d).

§ 87(2)(b)

### **Civilians CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (Enc. 3h – 3i).

### **Subject Officers CCRB History**

- PO Miriam Jimenez, PO Pedro Vazquez, PO Fredrick Disla, and PO Luis Rodriguez have been members of the service for 4, 19, 8, and 4 years, respectively, and have no substantiated CCRB allegations against them (Enc. 3b – 3e; 3g).
- PO Catherine Vargas has been a member of the service for seven years and there is one substantiated CCRB allegation against her (Enc. 3a):
  - In CCRB case number 201202887 the Board substantiated a discourtesy word allegation against PO Vargas and recommended Instructions. As of the writing of this report, the NYPD has not reached a disposition.
- PO Brian Davis has been a member of the service for ten years and there is one substantiated CCRB allegation against him (Enc. 3f):
  - In CCRB case number 200708090 the Board substantiated a property damage allegation against PO Davis and recommended Charges. In November 2008 the NYPD declined to prosecute.

## Conclusion

### Identification of Subject Officers and Pleading of Allegations

PO Jimenez and PO Vargas acknowledged their interaction with § 87(2)(b) and were mainly consistent in § 87(2)(b) description of their respective roles.

§ 87(2)(b) provided PO Pedro Vazquez's last name, described him as a 5'11" tall, heavyset uniformed white male officer in his 40s, and alleged that he used force against her, intentionally damaged her cell phone, and made profane statements while transporting her to the stationhouse. The investigation determined PO Vazquez is a 5'8" tall, 190-pound, 44-year-old, white-Hispanic male who was working in uniform on the day of the incident. PO Vazquez denied using force against § 87(2)(b) damaging her cell phone, and transporting her to the stationhouse. However, PO Brian Davis and PO Luis Rodriguez, who were working with PO Vazquez on the day of the incident, contend that PO Vazquez transported § 87(2)(b) to the stationhouse. Therefore, discourtesy, damaged property, and force allegations have been plead against PO Vazquez.

§ 87(2)(b) alleged that a black male officer used profanity toward her during her transport to the stationhouse. The investigation determined that only PO Vazquez, PO Rodriguez, and PO Davis were present during this time, and PO Davis was the only black male present. Therefore, a discourtesy allegation has been pleaded against him.

§ 87(2)(b) identified PO Fredrick Disla by his nameplate, described him as a dark-skinned Indian or Hispanic male in his late 20's, and alleged that on March 11, 2012, he spoke profanely to her at the stationhouse. The investigation determined PO Disla is a 30-year-old Hispanic male who was inside of the stationhouse at the time of the incident. Therefore, a discourtesy allegation has been pleaded against him.

### Investigative Findings and Recommendations

**Allegation A – Discourtesy: On March 9, 2012, in the vicinity of § 87(2)(b) in Manhattan, PO Miriam Jimenez spoke rudely to § 87(2)(b) and an individual.**

**Allegation B – Offensive Language: On March 9, 2012, in the vicinity of § 87(2)(b) in Manhattan, PO Catherine Vargas made remarks to § 87(2)(b) and an individual based on race.**

**Allegation D – Discourtesy: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Catherine Vargas spoke rudely to § 87(2)(b)**

**Allegation J – Discourtesy: On March 9, 2012, inside of § 87(2)(b) in Manhattan, and en route to the 28<sup>th</sup> Precinct stationhouse, PO Pedro Vazquez spoke rudely to § 87(2)(b)**

**Allegation K – Discourtesy: On March 9, 2012, while en route to the 28<sup>th</sup> Precinct stationhouse, PO Brian Davis spoke rudely to § 87(2)(b)**

**Allegation L – Discourtesy: On March 11, 2012, at the 28<sup>th</sup> Precinct stationhouse, PO Fredrick Disla spoke rudely to § 87(2)(b)**

§ 87(2)(b) alleged that PO Jimenez stated to § 87(2)(b) and § 87(2)(b) "Whatcha looking at bitch?" and "You mad because I called you a bitch?" § 87(2)(b) alleged that PO Vargas stated to § 87(2)(b) and § 87(2)(b) "Yea all three of you black bitches." § 87(2)(b) alleged that PO Vargas stated, "Back the fuck up" to § 87(2)(b) while effecting § 87(2)(b)'s arrest. § 87(2)(b) alleged that PO Vazquez stated to her, "Shut the fuck up" while he was handcuffing § 87(2)(b). During the transport to the stationhouse, § 87(2)(b) alleged that PO Vazquez and PO Davis continually told her to "Shut the fuck up." On March 11, 2012, while retrieving her property from the stationhouse, § 87(2)(b) alleged that PO Disla stated to her, "Get the fuck out. You want to get yourself

back here? Get out.” All officers denied using profanity toward § 87(2)(b) or hearing another officer do so.

§ 87(2)(b) and the bodega employee, § 87(2)(b) declined to provide a statement whereas § 87(2)(b) was unavailable to the investigation to provide a statement regarding the officer’s use of profanity and offensive language. The video footage was not equipped with audio and does not depict any officer yelling at § 87(2)(b) rendering no objective evidence as to whether officers used profane or offensive language during this incident. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation C – Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Catherine Vargas used physical force against § 87(2)(b)**

**Allegation E – Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Miriam Jimenez used physical force against § 87(2)(b)**

**Allegation F – Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Catherine Vargas struck § 87(2)(b) with an asp.**

It is undisputed that PO Vargas pushed and punched § 87(2)(b) and slammed her against a wall or freezer while PO Jimenez also punched § 87(2)(b). It is undisputed that PO Vargas struck § 87(2)(b) with an asp and that § 87(2)(b) was also kicking and punching officers while resisting arrest. § 87(2)(b)’s NYPD arrest photograph does not depict any visible physical injuries.

Patrol Guide Procedure 203-11 directs officers to use only the minimal amount of force necessary to take into custody a resistant individual (Enc. 1a – 1b).

Although § 87(2)(b) withdrew her portion of the complaint, § 87(2)(b) PO Vargas, PO Jimenez and the video evidence presented enough information to come to a recommended disposition absent § 87(2)(b)’s statement. § 87(2)(b) grabbed PO Vargas’ handcuffs and fled, later striking officers in the head with a metal object, kicking officers, and violently resisting arrest. To counteract her resistance, the officers first attempted to bear hug § 87(2)(b) then grab her to position her against a wall, and finally struck her with their fists. When § 87(2)(b)’s resistance and physical advances persisted, PO Vargas struck § 87(2)(b)’s back with an asp two times. The acceleration of force used by PO Vargas and PO Jimenez was reasonable, in that they started out minimal and increased the intensity of force when the initial force was unsuccessful in ceasing § 87(2)(b)’s high rate of resistance.

Although § 87(2)(b) withdrew her portion of the complaint, § 87(2)(b) witnessed the encounter first hand and provided a detailed account of the force used against § 87(2)(b) statement, supplemented by the video footage, provided enough evidence to come to a recommended disposition absent § 87(2)(b)’s statement. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation G – Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Pedro Vazquez used physical force against § 87(2)(b)**

**Allegation H – Force: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Pedro Vazquez used physical force against § 87(2)(b)**

**Allegation I – Abuse of Authority: On March 9, 2012, inside of § 87(2)(b) in Manhattan, PO Pedro Vazquez damaged § 87(2)(b)’s property.**

§ 87(2)(b) alleged that PO Vazquez jumped on § 87(2)(b) kicked § 87(2)(b) in the back, and intentionally threw § 87(2)(b)’s iPhone to the ground causing it to shatter during the course of her arrest. PO Vazquez contended, and his partners confirmed, that he arrived after § 87(2)(b) and § 87(2)(b)

No portion of PO Vazquez's alleged interaction with § 87(2)(b) or § 87(2)(b) was captured on the video footage, and no witnesses were able to attest to whether PO Vazquez even interacted with § 87(2)(b) or § 87(2)(b) or, if he did, the extent of that interaction. § 87(2)(b) never retrieved the phone from the bodega and it was not vouchered at the stationhouse, rendering the condition of the phone unknown. § 87(2)(b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)